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Counsel for Defendant Google LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**DECLARATION OF STEPHEN A.
BROOME IN SUPPORT OF GOOGLE
LLC'S OPPOSITION TO PLAINTIFFS'
MOTION FOR AN AWARD OF
ATTORNEY'S FEES, COSTS, AND
SERVICE AWARDS**

The Honorable Yvonne Gonzalez Rogers
Courtroom 1 – 4th Floor
Date: August 7, 2024
Time: 2:00 p.m

DECLARATION OF STEPHEN A. BROOME

I, Stephen A. Broome, declare as follows:

1. I am a member of the bar of the State of California and a partner with Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for Defendant Google LLC (“Google”) in this action. I submit this declaration in support of Google LLC’s Opposition to Plaintiffs’ Motion for an Award of Attorney’s Fees, Costs, and Service Awards. I make this declaration of my own personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

Plaintiffs’ Request for Fee Award

2. My team has reviewed the time entries submitted by counsel. Based on our review, there appears to be a discrepancy in Morgan & Morgan’s April 23, 2024 submission of time entries. The summary total lodestar provided in the submission (\$29,410,854.80) does not match the total of Morgan & Morgan’s time entries (\$29,343,024.80). In other words, the total lodestar of the three law firms in the submission (\$62,442,539.30), Dkt. 1107-1 at 3, appears to have been increased by \$67,830 due to what is likely a calculation error in Morgan & Morgan’s time entry submission. My team is unable to identify the specific entry or math error that is causing the discrepancy. Subtracting the discrepancy of \$67,830 and the erroneous time entries that counsel withdrew (\$137,056.70), Dkt. 1110, from the total lodestar counsel submitted in their motion (\$62,442,539.30), Google calculates the total lodestar counsel requests to be \$62,237,652.60.

3. Attached hereto as **Exhibit 1** is a chart summarizing Google’s requested exclusions and reductions to Plaintiffs’ fee award.

4. Attached hereto as **Exhibit 2** is a chart listing the attendees for Plaintiffs and Google’s outside counsel at 77 hearings and depositions in this case.

5. Attached hereto as **Exhibit 3** is an Excel spreadsheet consisting of 15 sheets showing the support for certain of the statements and calculations Google has included in its Opposition brief. The spreadsheet contains the narratives of class counsel’s time entries, which class counsel contend may contain privileged information. Pursuant to the parties’ agreement, Google is not filing Exhibit 3 on the docket but is instead providing it to the Court for *in camera* review via FTP by email. Specifically:

- a. Sheet 1 of **Exhibit 3** provides Google's calculation of the fees for document review performed by Morgan & Morgan at the rate \$676.00. It also provides the adjusted total fees for this document review should the Court decide to lower the document reviewer rates to \$387.50, as Google requests in its Opposition brief.
- b. Sheet 2 of **Exhibit 3** provides Google's calculation of time counsel spent on tasks related to their Rule 23(b)(3) certification effort and their related Motion for Interlocutory Appeal Under Rule 23(f). Google has subtracted from the total the time indicated in parentheses that was spent on tasks unrelated to those efforts and also adjusted downward for any block billed time that included tasks unrelated to that effort. For example, if counsel block billed three tasks in a time entry, Google divided the total dollar amount of that entry by three, and attributed to the Rule 23(b)(3) total the resulting amount.
- c. Sheet 3 of **Exhibit 3** provides Google's calculation of time counsel spent on Plaintiffs' withdrawn Rule 23(c)(4) motion. Google has subtracted from the total the time indicated in parentheses that was spent on tasks unrelated to that effort and also adjusted downward for any block billed time that included time spent on tasks unrelated to that effort. For example, if counsel block billed three tasks in a time entry, Google divided the total dollar amount of that entry by three, and attributed to the Rule 23(c)(4) total the resulting amount..
- d. Sheet 4 of **Exhibit 3** reflects all of class counsel's time entries across all three firms (Morgan & Morgan, Boies Schiller Flexner LLP, and Susman Godfrey LLP), and identifies by checkmarks Google's challenges to certain of those time entries on the basis of the following issues: (1) time spent on clerical tasks; and (2) vague time entries.
- e. Sheet 5 of **Exhibit 3** reflects all of class counsel's time entries across all three firms (Morgan & Morgan, Boies Schiller Flexner LLP, and Susman Godfrey LLP), and identifies by checkmarks Google's challenges to certain of those time entries on the basis: (1) excessive partner time; (2) over-attendance at meetings;

- 1 (3) block billing; (4) occasions where counsel billed over 12 hours in a single
2 day; and (5) time billed by counsel who never entered an appearance in this case.
- 3 f. Sheet 6 of **Exhibit 3** provides Google's calculation of time class counsel spent
4 preparing for and attending the deposition of Jonathan Hochman, which Google
5 took on July 20 and 21, 2022. Where counsel specifically indicated in parentheses
6 the time spent on tasks unrelated to the deposition, Google discounted that
7 portion of time from its calculation.
- 8 g. Sheet 7 of **Exhibit 3** provides Google's calculation of time class counsel spent
9 preparing for and attending the deposition of David Nelson, which Google took
10 on July 6, 2022. Where counsel specifically indicated in parentheses the time
11 spent on tasks unrelated to the deposition, Google discounted that portion of time
12 from its calculation.
- 13 h. Sheet 8 of **Exhibit 3** provides Google's calculation of time class counsel spent
14 preparing for and attending the deposition of Monique Trujillo, which Google
15 took on February 11, 2022. Where counsel specifically indicated in parentheses
16 the time spent on tasks unrelated to the deposition, Google discounted that
17 portion of time from its calculation.
- 18 i. Sheet 9 of **Exhibit 3** provides Google's calculation of time class counsel spent
19 preparing for and attending the deposition of Bert Leung, which Plaintiffs took
20 on March 4, 2022. Google has subtracted any portion of time that parentheses
21 indicate was spent on tasks unrelated to the deposition.
- 22 j. Sheet 10 of **Exhibit 3** provides Google's calculation of time class counsel spent
23 preparing for and attending the May 12, 2023 hearing on Google's Motion for
24 Summary Judgment. Where counsel specifically indicated in parentheses the
25 time spent on tasks unrelated to the hearing, Google discounted that portion of
26 time from its calculation.
- 27 k. Sheet 11 of **Exhibit 3** provides Google's calculation of time class counsel spent
28 preparing for and attending the April 21, 2022 hearing on Plaintiffs' Request for

1 an Order to Show Cause. Where counsel specifically indicated in parentheses the
 2 time spent on tasks unrelated to the hearing, Google discounted that portion of
 3 time from its calculation.

4 l. Sheet 12 of **Exhibit 3** provides Google's calculation of time class counsel spent
 5 preparing for and attending the September 29, 2023 mediation session. Where
 6 counsel specifically indicated in parentheses the time spent on tasks unrelated to
 7 the mediation, Google discounted that portion of time from its calculation.

8 m. Sheet 13 of **Exhibit 3** provides all time entries by Boies Schiller partner Alex
 9 Boies.

10 n. Sheet 14 of **Exhibit 3** provides all time entries by Susman Godfrey partner Ian
 11 Crosby.

12 o. Sheet 15 of **Exhibit 3** provides all time entries by Morgan & Morgan attorney
 13 Shelby Serig, including Google's identification of time entries where Ms. Serig
 14 billed for sending or reading emails.

15 6. Attached hereto as **Exhibit 4** is a chart listing the injunctive relief Plaintiffs sought
 16 in their Fourth Amended Complaint dated March 2, 2023 (Dkt. 886 at 72), the Motion for Class
 17 Certification dated June 21, 2022 (Dkt. 608-3 at 24), and the Pretrial Conference Statement dated
 18 October 17, 2023 (Dkt. 1028-1 at 9–11), as well as the corresponding agreed upon remediation
 19 measures in the Settlement Agreement dated March 11, 2024 (Dkt. 1097-3 at 7–9), if any.

20 7. Our review of the docket and class counsel's declarations revealed that 24 counsel
 21 billed \$4,182,433 in this case without entering an appearance. Attached hereto as **Exhibit 5** is a
 22 chart which lists the names of these counsel, their titles, the year of their bar admission, the firms
 23 with which they are associated, their billing rates, and the total amount of time and fees they billed.

24 8. I have reviewed Dkt. 1107-6 (Mao Decl. Ex. 3), which is a copy of excerpts of
 25 Wolters Kluwer's 2023 Real Rate Report. According to the report, in 2023, the median attorney
 26 hourly rate in San Francisco was \$750 for litigation partners and \$450 for litigation associates. Dkt.
 27 1107-6 (Mao Decl. Ex. 3). The third-quartile rate was \$1,124 for partners and \$718 for associates.
 28 *Id.*

1 9. I have reviewed Dkt. 1107-5 (Mao Decl. Ex. 2), which is a chart Plaintiffs submitted
 2 that reflects the current hourly rates for all timekeepers. According to the chart, the rates billed by
 3 partners and counsel range from \$850 to \$2,500, which are above the median rates reflected in
 4 Wolters Kluwer's Real Rate Report, and for 15 of the partners/counsel, above the third-quartile
 5 rates. Dkt. 1107-5 (Mao Decl. Ex. 2). The rates billed by associates range from \$250 to \$1,000, with
 6 most of these attorneys billing above both the median and third-quartile rates. *Id.*

7 10. Google's outside counsel team consisted of 43 Quinn Emanuel attorneys, including
 8 10 who billed fewer than 20 hours to the case. Several billed less than ten hours.

9 11. Google's total spend on outside counsel (including contract lawyers performing
 10 document review) was many millions of dollars less than class counsel's adjusted lodestar, as
 11 calculated in Google's Opposition brief. Google calculated class counsel's adjusted lodestar to be
 12 \$39,681,184.93.

13 12. When the Magistrate Judge ordered Google to review more than 200,000 documents
 14 in less than 90 days, Google hired 300 outside contract lawyers for that short period of time to
 15 review documents for responsiveness and privilege and paid \$69/hr (on average) for these document
 16 reviewers, which is over \$607/hr less than Morgan & Morgan charged for document review.

17 13. Plaintiffs served 235 requests for production, 40 interrogatories, and 67 requests for
 18 admission in this litigation. Many of these discovery requests sought facts related to Plaintiffs'
 19 theory that Google linked PBM data to users' Google Accounts to identify them and "gain[] a
 20 complete, cradle-to-grave profile of Plaintiffs without their consent" (Dkt. 1 (Compl.) at ¶ 39) and
 21 related class identification theories, including, for instance, RFP Nos. 10, 19, 44, 49, 59, 60, 75, 76,
 22 77, 91, 92, 106, 118, 133, 139, 147, 158, 161, 174, 182, 200, 216, 217; RFAs Nos. 7, 8, 9, 10, 14,
 23 32, 33, 34, 37, 38, 39, 43, 48, 49, 68; and Interrogatory Nos. 1, 2, 3, 4, 10, 11, 17, 21, 23, 24, 31, 32.

24 14. Just to provide a few examples, RFP No. 75 sought "Documents concerning
 25 Google's association of data collected while users are in private browsing mode with unique user
 26 profiles through Google Analytics User-ID"; RFP No. 76 sought "Documents sufficient to identify
 27 all profiles created by Google, including profiles containing any data collected in connection with
 28 users' activity while in a private browsing mode"; RFP No. 77 sought "Documents sufficient to

1 identify all ways in which Google uses profiles, including profiles containing any data collected in
 2 connection with users' activity while in a private browsing mode"; and RFP No. 133 sought
 3 "Documents sufficient to identify all profiles Google has of or are linked to Plaintiffs or any device
 4 used by Plaintiffs." *See Exhibit 6*, attached hereto, which is a true and correct copy of Google's
 5 Responses and Objections to Plaintiffs' Second Set of Requests for Production (Nos. 20–149), dated
 6 December 2, 2020.

7 15. RFA No. 7 sought admission that "Since at least June 1, 2016, Google has been
 8 creating profiles for targeted advertising using data collected in connection with private browsing
 9 mode communications, including Incognito mode communications"; RFA No. 8 sought admission
 10 that "Since at least June 1, 2016, Google has not disclosed to users that it has been creating profiles
 11 for targeted advertising using data collected while users are in a private browsing mode"; RFA No.
 12 9 sought admission that "Since at least June 1, 2016, Google has attempted to associate (and in fact
 13 has associated) data generated by users' private browsing mode activities with users' individual
 14 Google accounts"; and RFA No. 10 sought admission that "Since at least June 1, 2016, Google has
 15 not disclosed that it has attempted to associate (and in fact has associated) data generated by users'
 16 private browsing mode activities with users' individual Google accounts." *See Exhibit 7*, attached
 17 hereto, which is a true and correct copy of Google's Responses and Objections to Plaintiffs' First
 18 Set of Requests for Admission (Nos. 1–11), dated November 6, 2020.

19 16. Interrogatory No. 1 asked Google to "describe Google's collection, storage, and use
 20 of data from users' private browsing, including ... (d) how such data is used (e.g. profiles,
 21 association with other data ..."; Interrogatory No. 2 asked Google to "describe the history of
 22 Google's use, transfer, and storage of the X-Client-Data Header, including ... (c) explaining when
 23 and why Google paired data Google received via Google Analytics or Google Ad Manager with
 24 Google Analytics USER-ID or any other user identifier ..."; and Interrogatory No. 3 asked that "for
 25 each occasion where Google received data via Google Analytics or Google Ad Manager in
 26 connection with any user browsing but where Google did not also receive any X-Client-Data Header
 27 information, [Google] identify ... (e) whether and when such data was paired with Google Analytics
 28 USER-ID or any additional user identifier (such as users' Gmail or another Google login) ..."

Attached hereto as **Exhibit 8** is a true and correct copy of Google's Responses and Objections to Plaintiffs' First Set of Interrogatories (Nos. 1–3), dated February 5, 2021.

17. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts from the transcript of the November 4, 2021 hearing.

18. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from the transcript of the April 21, 2022 hearing.

19. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the transcript of the November 29, 2023 hearing.

20. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the transcript of the deposition of Jesse Adkins, taken on April 14, 2021.

21. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts from the transcript of the deposition of Abdelkarim Mardini, taken on November 23, 2021.

22. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from the transcript of the deposition of AbdelKarim Mardini, taken on November 24, 2021.

23. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from the transcript of the deposition of Rory McClelland, taken on February 18, 2022.

24. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from the transcript of the October 24, 2022 hearing in the related *Calhoun* case. I am informed that Plaintiffs ordered a copy of this transcript.

25. Attached hereto as **Exhibit 17** is a true and correct copy of an email exchange between counsel for Google and counsel for Plaintiffs dated April 9 through 18, 2024.

26. Attached hereto as **Exhibit 18** is the true and correct copy of the August 30, 2023 Rebuttal Expert Report of Konstantinos Psounis, Ph.D.

Plaintiffs' Request for Cost Award

27. Attached hereto as **Exhibit 19** is a chart summarizing Google's requested exclusions and reductions to Plaintiffs' cost award.

28. The examples below and compiled in **Exhibit 20** are mere illustrations of the issues Google has identified with the remainder of counsel's costs. Pursuant to the parties' agreement,

- \$678.24 on car services between two private residencies (Row No. 2);
- \$52.31 on Uber rides to and from an establishment that appears to be a day spa (Row Nos. 3 and 4);
- \$97.75 on Uber ride from an address of a karaoke bar to the address of another bar (Row No. 5); and
- \$70 on TSA precheck (Row No. 6).

Executed 7th day of June, 2024, at Los Angeles, California.

By /s/ Stephen A. Broome
Stephen A. Broome